

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA]	
]	
v.]	No. 20-CR-00006-PB
]	
CHRISTOPHER CANTWELL]	

DEFENDANT'S MOTION IN LIMINE #2:
TO EXCLUDE REFERENCES TO CHARLOTTESVILLE, VIRGINIA, AND THE
UNITE THE RIGHT RALLY

The Government may seek to introduce evidence and testimony pertaining to the Defendant's involvement in the "Unite the Right" rally in Charlottesville, Virginia in August, 2007. The Defense objects to the presentation of any evidence that identifies or relates to "Charlottesville," "Virginia," or "Unite the Right" as such evidence is highly prejudicial. Any relevance the Government may assert such evidence has is substantially outweighed by the danger of unfair prejudice.¹

The present charges stem from an online communication in June 2019. In August 2017, Cantwell was involved in the "Unite the Right" rally in Charlottesville, Virginia. The Charlottesville rally was put together by a collection of leaders in the white nationalist movement. Cantwell gained a degree of notoriety for his involvement in the rally when Vice News, a program aired nationally on Home Box Office (HBO), televised his interviews with a journalist. Cantwell gained additional

¹ Although this motion focuses on Rule 403 prejudice, the Defense reserves the right to object to admission of this evidence on other grounds.

national attention when he was arrested in relation to his involvement in the rally and labeled “the Crying Nazi.”² He was later convicted of misdemeanor offenses.

Joseph Biden’s campaign for president of the United States has returned the “Charlottesville” rally to the current national political discourse. On August 20, 2020, Biden accepted the Democratic Party’s nomination for president of the United States. In his nationally televised speech, Biden said:

Just a week ago yesterday was the third anniversary of the events in Charlottesville. Remember seeing those neo-Nazis and Klansmen and white supremacists coming out of the fields with lighted torches? Veins bulging? Spewing the same anti-Semitic bile heard across Europe in the ’30s? Remember the violent clash that ensued between those spreading hate and those with the courage to stand against it? Remember what the president said? There were quote, “very fine people on both sides.”

It was a wake-up call for us as a country. And for me, a call to action. At that moment, I knew I’d have to run. My father taught us that silence was complicity. And I could not remain silent or complicit. At the time, I said we were in a battle for the soul of this nation. And we are.³

The week prior, in an August 12, 2020 speech, Biden introduced his vice presidential running mate, Kamala Harris. His highly awaited announcement was intended for a national audience and included the following discussion of Charlottesville:

We have a racial justice crisis. Donald Trump seeks only to inflame it with his politics of racist rhetoric and appeals to division. Today’s not only the day I’m proud to introduce Senator Kamala Harris as the vice presidential nominee of the Democratic Party. It’s also the third anniversary of that terrible day in Charlottesville. Remember? Remember what it felt like to see those neo-Nazis, close your eyes, and those Klansmen, white supremacists, coming. . . close your eyes, and

² See e.g., Justin Wm Moyer, *The ‘crying Nazi’ is hosting a radio show from the Charlottesville jail*, Washington Post, October 31, 2017 available at https://www.washingtonpost.com/local/public-safety/the-crying-nazi-is-hosting-a-radio-show-from-a-virginia-jail/2017/10/31/7789f4cc-bda5-11e7-a568-e899b546d3c9_story.html (last visited Sept. 1, 2020).

³ Matt Stevens, *Joe Biden Accepts Presidential Nomination: Full Transcript*, N.Y. Times, Aug. 20, 2020 available at <https://www.nytimes.com/2020/08/20/us/politics/biden-presidential-nomination-dnc.html> (last visited Sept. 1, 2020).

those Klansmen, white supremacists, coming out of fields, carrying lighted torches, faces contorted, bulging veins, pouring into the streets of a historic American city, spewing the same antisemitic bile we heard in Hitler's Germany in the '30s. Remember how it felt to see a violent clash ensue between those celebrating hate and those standing against it? It was a wake up call for all of us as a country. For me, it was a call to action. My father used to say, silence is complicity, not original to him, but he believed it. At that moment, I knew I couldn't stand by and let Donald Trump, a man who went on to say when asked about what he thought he said, there were very fine people on both sides, "Very fine people on both sides." No president of the United States of America has ever said anything like that, see him continuing to attack everything that makes America America. I knew we were in the battle for the soul of the nation. That's when I decided to run.⁴

Senator Harris followed Biden and told a national audience that "Joe likes to say that character is on the ballot. And it's true. When he saw what happened in Charlottesville three years ago today, he knew we were in a battle for the soul of our nation. And together with your help, that's a battle we will win."⁵

Biden has repeatedly cited Charlottesville as the impetus for his presidential candidacy. In accepting his party's nomination, and in introducing his running mate, Biden told America that Charlottesville was a metaphoric battle for the "soul of the nation." He described those who participated in Charlottesville in evocative, dangerous, and animalistic language and characterized rally participants as a grave threat to America's soul and ideals. Biden publicly characterized Charlottesville as a

⁴ Joe Biden and Kamala Harris Speech Transcript August 12: First Campaign Event as Running Mates *available at* <https://www.rev.com/blog/transcripts/joe-biden-and-kamala-harris-speech-transcript-august-12-first-campaign-event-as-running-mates> (last visited Sept. 1, 2020). *See also* Tim Harris, Joe Biden Introduces Running Mate Kamala Harris: "She's Ready To Do The Job On Day One" Real Clear Politics, Aug. 12, 2020 *available at* https://www.realclearpolitics.com/video/2020/08/12/watch_live_kamala_harris_and_joe_biden_make_first_campaign_appearance.html (last visited Sept. 1, 2020) (providing transcript of full speech as prepared for delivery).

⁵ Chelsey Sanchez, *Read Kamala Harris's First Speech as Vice President Nominee*, Harper's Bazaar, Aug. 12, 2020, *available at* <https://www.harpersbazaar.com/culture/politics/a33587468/kamala-harris-first-speech-vice-president-nominee-delaware/> (last visited Sept. 1, 2020).

“battle for the soul of the nation” prior to entering the presidential race. In August 2017, before announcing his candidacy, Biden wrote an article for The Atlantic magazine entitled “We Are Living Through a Battle for the Soul of This Nation.”⁶

There, Biden wrote:

In Charlottesville, that long trail emerged once again into plain view not only for America, but for the whole world to see. The crazed, angry faces illuminated by torches. The chants echoing the same anti-Semitic bile heard across Europe in the 1930s. The neo-Nazis, Klansmen, and white supremacists emerging from dark rooms and remote fields and the anonymity of the web into the bright light of day on the streets of a historically significant American city.

...

This is a moment for this nation to declare what the president can't with any clarity, consistency, or conviction: There is no place for these hate groups in America. Hatred of blacks, Jews, immigrants—all who are seen as “the other”—won't be accepted or tolerated or given safe harbor anywhere in this nation.

That's the America I know. That's who I believe we are. And in the hours and days after Charlottesville, America's moral conscience began to stir. The nation's military leadership immediately took a firm stand. Some of America's most prominent CEOs spoke out. Political, community, and faith leaders raised their voices. Charitable organizations have begun to take a stand. And we should never forget the courage of that small group of University of Virginia students who stared down the mob and its torches on that Friday night.

...

You, me, and the citizens of this country carry a special burden in 2017. We have to do what our president has not. We have to uphold America's values. We have to do what he will not. We have to defend our Constitution. We have to remember our kids are watching. We have to show the world America is still a beacon of light.

⁶ Joe Biden, We Are Living Through a Battle for the Soul of This Nation, August 27, 2017 *available at* <https://www.theatlantic.com/politics/archive/2017/08/joe-biden-after-charlottesville/538128/> (last visited Sept. 1, 2019).

Joined together, we are more than 300 million strong. Joined together, we will win this battle for our soul. Because if there's one thing I know about the American people, it's this: When it has mattered most, they have never let this nation down.

In that article, as in his speech, Biden invoked war-like language (“battle,” defend,” “stare[d] down the mob”) and characterized Charlottesville’s marchers as enemies of our country in treasonous terms (“defend our Constitution,” “battle for our soul”).

On April 25, 2019, Biden announced his campaign for president with a video entitled “Joe Biden for President: America is an Idea.”⁷ His first words were “Charlottesville, Virginia.” Biden made the Charlottesville rally the focus of his campaign announcement and reiterated the strong language heard in later speeches. In his campaign video, Biden stated:

Charlottesville is also home to a defining moment for this nation in the last few years. It was there on August of 2017 we saw Klansmen and white supremacists and neo-Nazis come out in the open, their crazed faces illuminated by torches, veins bulging, and bearing the fangs of racism. Chanting the same anti-Semitic bile heard across Europe in the ‘30s. And they were met by a courageous group of Americans, and a violent clash ensued and a brave young woman lost her life.

...

With those words [that there were “some very fine people on both sides”] the president of the United States assigned a moral equivalence between those spreading hate and those with the courage to stand against it. And in that moment, I knew the threat to this nation was unlike any I had ever seen in my lifetime. I wrote at the time that we’re in the battle for the soul of this nation. Well, that’s even more true today. We are in the battle for the soul of this nation.⁸

⁷ <https://www.youtube.com/watch?v=VbOU2fTg6cI> (Biden campaign video, Apr. 25, 2019, Joe Biden for President: American is an Idea) (“Announcement video”).

⁸ <https://www.nytimes.com/2019/04/25/us/politics/biden-campaign-video-announcement.html> (transcribing Biden’s announcement video).

Cantwell is visible in Biden's campaign announcement video, wearing a "Radical Agenda" tee-shirt, during the rally.⁹

References to Charlottesville, Virginia have resurfaced repeatedly during Biden's presidential campaign. Biden routinely incorporates video from the rally to serve as a visual counterpoint to his political views.¹⁰ "Charlottesville" serves as shorthand for evil and anti-Americanism that Biden links to his opponent, President Donald Trump. In the current climate, the word "Charlottesville" needs no further description or context; its mere mention is shorthand for the Democratic nominee's position on what is anti-American, un-American, and immoral. Although this may be shrewd politicking in a national election, these statements jeopardize the Defendant's right to a fair trial and create a nearly insurmountable prejudice to the Defendant. Any probative value the Government may assert arises from presenting evidence from the Unite the Right rally and Cantwell's participation therein, or in referencing "Charlottesville," would be substantially outweighed by unfair prejudice in light of its use and meaning in the current political campaign. FED. R. EVID. 403.

By filing this motion, the Defense is not seeking to wholesale *in limine* out either the Defendant or the alleged victim's past statements or involvement in white nationalism. Jurors will hear evidence related to the Defendant and alleged victim that are objectionable to many Americans. However, "Charlottesville" is a loaded political prop on the national stage with its own meaning and symbolism. It has been

⁹ See Announcement Video at 1:08 (Cantwell moving in slow motion in rally video footage).

¹⁰ <https://www.youtube.com/watch?v=CV1la96XHqE> (Biden campaign video, June 18, 2020, "Unite Us," including footage from the rally); <https://www.youtube.com/watch?v=VyJk3H2MtZI> (Biden campaign video, "Better America" August 6, 2020, including footage of the rally); Announcement video (including footage of the rally).

embraced by one of the two major parties' nominee as the exemplar of evil. The admission of any reference to Charlottesville or the rally that took place there is highly prejudicial in the current political climate. Admitting such evidence would violate Federal Rule of Evidence 403 and deny the Defendant his constitutional right to fair trial by an impartial jury.

For the above noted reasons, the Defendant requests that the Court exclude from evidence any testimony or documentary evidence about Cantwell's involvement in the Charlottesville, Virginia. Additionally, the Defense requests that the Government be ordered to advise its witnesses not to refer to "Charlottesville," "Virginia," or the "Unite the Right" during their testimony.

Respectfully submitted,
Christopher Cantwell
By His Attorney,

Date: September 3, 2020

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CERTIFICATE OF SERVICE

I hereby certify that the above document was served on September 3, 2020 in the manner specified herein: provided to the Government via ECF.

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